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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

ALEXANDRIA BAE AMIRIAN,

Plaintiff and Appellant,

v.

SON SUK AN,

Defendant and Respondent.

B150221

(Los Angeles County  
Super. Ct. No. BC213891)

APPEAL from a judgment of the Superior Court of Los Angeles County. Paul Boland, Judge. Affirmed.

Law Offices of Michael R. Hecker and Michael R. Hecker for Plaintiff and Appellant.

Law Offices of Erica M. Kim & Associates, Erica M. Kim, and Thomas J. Ryu for Defendant and Respondent.

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Plaintiff and appellant Alexandria Bae Amirian (Amirian) appeals the trial court's entry of judgment against her and in favor of defendant and respondent Son Suk An (An) on Amirian's request for specific performance. The parties had entered into an agreement whereby Amirian would purchase An's liquor store and accompanying commercial property. The trial court found that although An had breached the parties' agreement, Amirian was not entitled to specific performance because she had failed to demonstrate that she was ready, willing, and able to perform, a condition of a request for specific performance. (*C. Robert Nattress & Associates v. CIDCO* (1986) 184 Cal.App.3d 55, 64 (*Nattress*).) Amirian appeals the trial court's judgment on the grounds that she presented ample evidence of her ability to perform the contract and, as such, the trial court erred in denying her request for specific performance. We find substantial evidence supports the trial court's judgment. Accordingly, we affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

This action arises from the aborted sale of a liquor store. In April 1999, Amirian and An entered into an agreement whereby An agreed to sell and Amirian agreed to purchase An's liquor store and the property upon which the store was located for \$520,000, plus inventory valued at \$65,000. According to the escrow instructions, Amirian was required to deposit \$10,000 with the escrow company upon execution of the escrow documents, pay the remaining \$90,000 of the down payment on or before submission of the requisite form to obtain an alcoholic beverage control (ABC) license (approximately 30 days later), and obtain a Small Business Association (SBA) loan in the amount of \$320,000. The parties also agreed that the remaining \$100,000 would be in the form of a promissory note, with an annual interest rate of nine percent, payable in monthly installments of \$2,075.86, scheduled to amortize in 60 equal monthly payments.

In accordance with the escrow instructions, escrow subsequently was opened and Amirian made a \$10,000 deposit with the escrow company.

Thereafter, Amirian obtained conditional SBA loan approval from Nara Bank. On June 9, 1999, Harry S. Won (Won), a Nara Bank loan officer, sent Amirian a letter

approving her request for a loan to purchase the liquor store and accompanying commercial property. The letter also advised Amirian that “[f]unding of this loan is subject to meeting all necessary requirements of the Bank and the U.S. SBA as authorized in the SBA authorization and loan agreement.” Previously, on June 8, 1999, Marjorie Kim, a loan documentation specialist in the SBA Department of Nara Bank, had sent Amirian a letter detailing the 10 items required for the SBA loan to fund.

In October or November 1999, Nara Bank sent Amirian a letter informing her that the loan had been canceled.

Ultimately, the deal fell apart when, as the trial court found, An breached her obligation to cooperate in effectuating the sale by failing to take the steps necessary to transfer the ABC license to Amirian. As a result, on July 21, 1999, Amirian filed this lawsuit against An, alleging a variety of causes of action arising out of An’s refusal to sell and seeking specific performance of the agreement to sell the liquor store and property.<sup>1</sup> The matter proceeded to a court trial on October 11, 2000. On March 14, 2001, the trial court filed its detailed statement of decision and entered judgment in An’s favor on that date. Specifically, the trial court found that Amirian had failed to prove that she was entitled to specific performance of the purchase agreement because she had not proven that she was “ready, willing and able to perform her obligations under the purchase agreement at the time the agreement was entered into and during the pendency of this action.” The trial court also found that Amirian had not proven (1) that she personally had the funds to perform the purchase agreement, and (2) that her prospective lenders (Nara Bank and her brother, Jun Bae (Bae)) had the ability to supply the funds and were legally bound to do so.

Amirian timely filed her appeal on May 11, 2001.

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<sup>1</sup> The complaint sought monetary damages and specific performance. This appeal only concerns Amirian’s claim for specific performance. The complaint also asserted causes of action against Joseph Cho, the real estate broker. Mr. Cho is not a party to this appeal.

## DISCUSSION

### I. *Standard of Review*

We review the trial court's findings for the existence of substantial evidence. (*San Diego Metropolitan Transit Development Bd. v. Handlery Hotel, Inc.* (1999) 73 Cal.App.4th 517, 528.) “[S]ubstantial evidence” is not “synonymous with “any” evidence. It must be reasonable . . . , credible, and of solid value . . . .’ [Citation.]” (*Kuhn v. Department of General Services* (1994) 22 Cal.App.4th 1627, 1633.) However, “the power of an appellate court begins and ends with the determination as to whether, on the entire record, there is substantial evidence, contradicted or uncontradicted, which will support the determination [of the trier of fact], and when two or more inferences can reasonably be deduced from the facts, a reviewing court is without power to substitute its deductions for those of the [trier of fact].” (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873-874, italics omitted.) Finally, “in all cases, the determination whether there was substantial evidence to support a finding or judgment must be based on the whole record. The reviewing court may not consider only supporting evidence in isolation, disregarding all contradictory evidence.” (*Rivard v. Board of Pension Commissioners* (1985) 164 Cal.App.3d 405, 412.)

### II. *Substantial Evidence Supports the Trial Court's Judgment Denying Amirian's Request for Specific Performance*

Specific performance of a contract is an equitable remedy subject to equitable principles, and is codified in California law in Civil Code sections 3384 through 3395. A buyer seeking specific performance of a contract has the burden of proving that she was ready, willing, and able to perform the contract. (*AM-Cal Investment Co. v. Sharlyn Estates, Inc.* (1967) 255 Cal.App.2d 526, 539 (*Am-Cal Investment Co.*)). Evidence of the purchaser's assets is sufficient evidence of the purchaser's ability to perform to support a request for specific performance. (*Henry v. Sharma* (1984) 154 Cal.App.3d 665, 672 (*Henry*)). However, if a purchaser does not have sufficient funds to perform the contract, she nevertheless may be entitled to specific performance by showing that she made

arrangements to borrow the requisite funds from a lending institution or third party, so long as that third party is legally bound by contract to advance the funds and has the financial ability to do so. (*AM-Cal Investment Co.*, *supra*, 255 Cal.App.2d at pp. 539-540.) Moreover, the buyer must prove that she was ready, willing, and able to perform both at the time the agreement was reached and during the prosecution of the specific performance action. (*Nattress*, *supra*, 184 Cal.App.3d at p. 64.)

The issue presented in this appeal is whether Amirian was “able” to perform the contract, both at the time the agreement was reached and during the prosecution of this action. Thus, we first consider whether Amirian had adequate funds to purchase the liquor store outright. Substantial evidence supports the trial court’s conclusion that Amirian did not personally possess sufficient funds to purchase the liquor store. While Amirian testified that she had the funds necessary to come up with the down payment, she never testified that she possessed adequate funds to purchase the liquor store without a loan. Her bank records confirm that, at best, she had about \$90,000 in her account, an amount which does not satisfy the entire purchase price. Even Amirian admits on appeal that she only had “50% of the funds available, in her account, at all times during the pendency of the litigation.” Quite simply, 50 percent is not enough; either she had the entirety of the funds available or she was not able to perform without a loan from a third party.

Having found that Amirian could not purchase the liquor store without assistance from a third party, we next consider whether a third party was legally bound to loan Amirian the money necessary to purchase the liquor store. At trial, Amirian offered two potential sources: (1) an SBA loan from Nara Bank, and (2) Bae. With respect to Nara Bank, substantial evidence supports the trial court’s finding that Nara Bank never was legally bound to loan Amirian the money. Amirian failed to present, both at trial and on appeal, any evidence proving that Nara Bank was legally obligated to issue the loan to her. The loan documents never were completed, and absent final loan documents signed by Amirian, Nara Bank had no obligation to fund the loan.

In fact, substantial evidence indicates that Amirian never could have obtained final loan approval and funding of the loan. As evidenced by the letters from Nara Bank, Amirian was required to satisfy several conditions, including supplying various documents to the bank, before the SBA loan would fund. An demonstrated at trial that Amirian never provided the requisite documentation for final loan approval and funding.

Moreover, in November 1999, Amirian's original loan application was canceled. As set forth above, without the loan, Amirian was not able to purchase the liquor store from An. While Amirian contends that the loan merely was "dormant" and could be refreshed at any time, thereby evidencing Nara Bank's obligation to loan her the money to purchase the liquor store, substantial evidence supports a contrary conclusion. At trial, Nara Bank representatives testified that no such representation was made to Amirian; in fact, Won had no idea what the term "dormant" meant. Moreover, in response to a specific question from the trial court, Won explained that a loan application could not be "re-activated"; a customer only could "re-apply." Under these circumstances, the trial court did not abuse its discretion in believing Won and Marjorie Kim and disbelieving Amirian. (*In re Sheila B.* (1993) 19 Cal.App.4th 187, 199 [reiterating the well-established rule that an appellate court defers to the trial court on the issue of witness credibility].)

With respect to her brother, Amirian directs us to the evidence of his willingness and financial ability to loan her the money to purchase the liquor store. Like the evidence of the SBA loan, however, Amirian presented insufficient evidence of his legal obligation to loan her the money. Bae testified that he had no enforceable agreement, oral or written, legally binding him to loan her any money for purchasing the liquor store. If Amirian's theory of his obligation rests upon his alleged requirement to repay the monies he borrowed from her to pay for dental school, that contention also fails. Amirian failed to present evidence of the amount of money she loaned him. And, it is clear from his testimony that when Amirian gave the money to her brother, she never asked for that money to be repaid. At best, Bae offered to help Amirian pay her legal fees associated

with this lawsuit, evidence which is insufficient to support her claim that he was obligated to loan her money to purchase An's liquor store. In short, substantial evidence supports the trial court's conclusion that Amirian failed to prove that Bae was legally obligated to loan her money.

Relying upon *Henry*, Amirian contends that she was entitled to a reasonable time in which to perform.<sup>2</sup> Even if Amirian were entitled to a reasonable time in which to perform (present the monies to purchase the liquor store and property), she still failed to demonstrate that she could have performed in a reasonable time because, as stated above, she personally did not possess sufficient funds to effect the sale and she failed to present evidence that a third party was legally obligated to provide her with the money. (*Henry*, *supra*, 154 Cal.App.3d at pp. 670-671.) In other words, she failed to prove that she had the ability to pay the purchase price within a reasonable time. (*Id.* at p. 669.)

### DISPOSITION

The judgment is affirmed. Amirian to bear costs on appeal.

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\_\_\_\_\_, J.  
ASHMANN-GERST

We concur:

\_\_\_\_\_, Acting P. J.  
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\_\_\_\_\_, J.  
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<sup>2</sup> It appears that this argument is being raised for the first time on appeal. Thus, we cannot consider this issue. (*California State Auto. Assn. Inter-Ins. Bureau v. Antonelli* (1979) 94 Cal.App.3d 113, 122; Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2001) ¶ 1:44, p. 1-8.1 [stating that “ordinarily, issues not raised in the trial court proceedings (or raised but not pursued) are *waived*”].) Nevertheless, in the interest of resolving all issues on the merits, we address this theory herein.